

**2003 DRAFTING REQUEST****Bill**Received: **09/19/2003**Received By: **jkreye**Wanted: **Soon**

Identical to LRB:

For: **Ann Nischke (608) 266-8580**

By/Representing:

This file may be shown to any legislator: **NO**Drafter: **jkreye**

May Contact:

Addl. Drafters: **rmarchan  
mshovers**Subject: **Tax - corp. inc. and fran.  
Econ. Development - bus. dev.  
Tax - miscellaneous**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Nischke@legis.state.wi.us**Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us  
robert.marchant@legis.state.wi.us  
marc.shovers@legis.state.wi.us**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Tax credit for new business venture

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 09/24/2003	kgilfoy 09/24/2003					State Tax

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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rev 3266/11

Please  
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for  
Rep Nischke

thanks  
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**2003 SENATE BILL 261**

(stays)

D-N  
in 9-24-03  
due thru 9-25

September 24, 2003 – Introduced by Senators KANAVAS, STEPP, LEIBHAM, DARLING, BROWN, WELCH, ZIEN, LASSA and ROESSLER, cosponsored by Representatives NISCHKE, MCCORMICK, LADWIG, MUSSER, MONTGOMERY, TOWNS, OWENS, M. LEHMAN, WEBER, VAN ROY, KRAWCZYK, OLSEN and OTT. Referred to Joint Committee on Finance.

Gen. Cat.

1 AN ACT *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2)  
2 (a) 10. and 77.92 (4); and *to create* 71.05 (24), 71.07 (5d), 71.10 (4) (gx), 71.28  
3 (5d), 71.30 (3) (eop), 71.47 (5d), 71.49 (1) (eop) and 560.03 (24) to (27) of the  
4 statutes; **relating to:** creating a qualified new business venture tax credit and  
5 a capital gains tax exemption regarding investments in certified venture  
6 capital funds and qualified new business ventures, requiring a study of new  
7 Wisconsin businesses, facilitating the development of certain investor  
8 networks, and granting rule-making authority.

***Analysis by the Legislative Reference Bureau***

This bill creates an income and franchise tax credit for investments in a new business venture that has its headquarters and the majority of its employees in this state. The bill requires a business desiring certification as a new business venture for purposes of this tax credit to apply to the Department of Commerce. The amount of the tax credit is equal to 20 percent of the taxpayer's investment in a new business venture in the taxable year, except that if the taxpayer's investment exceeds \$100,000 in the taxable year the taxpayer may claim 20 percent of \$100,000 plus ten percent of the amount of the investment that exceeds \$100,000. In addition, if the taxpayer is a broker-dealer, the taxpayer may claim a tax credit in amount equal to

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**SENATE BILL 261**

ten percent of the first \$500,000 raised in an offering of a new business venture in the taxable year. Under current law, a broker-dealer is, generally, any person engaged in the business of effecting transactions in securities.

This bill also requires the Department of Commerce, in cooperation with the Department of Financial Institutions and the University of Wisconsin System, to annually conduct and publish the results of a study of Wisconsin businesses to determine new business formation trends and identify obstacles faced by new Wisconsin businesses and areas where changes in governmental policy may satisfy the needs of new Wisconsin businesses. In addition, the bill requires the Department of Commerce, in cooperation with the Department of Financial Institutions and the University of Wisconsin System, to provide education and other support to facilitate the development of networks of investors that review new businesses or proposed new businesses for potential investment (commonly called "angel capital networks").

Under current law, there is an income tax exclusion for individuals and tax-option corporations for 60 percent of the net capital gains realized from the sale of assets held for at least one year.

Under this bill, an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation (claimant) may elect to defer the payment of income taxes on the gain realized from the sale of any asset held more than one year, to the extent that the gain is not already excluded from taxation, or any asset that is an investment in a venture capital fund (original asset), if the claimant completes a number of requirements.

Under the bill, the claimant must place the gain from the original asset in a segregated account in a financial institution, purchase another capital asset that is an investment in a venture capital fund or in a qualified new business venture (replacement asset) within 90 days after the sale of the original asset that generated the gain, and notify the Department of Revenue (DOR) on a form prepared by DOR that the claimant is deferring the payment of income tax on the gain from the original asset because the proceeds have been reinvested. The cost of the replacement asset must be equal to or greater than the gain generated by the sale of the original asset.

The bill also specifies that the basis of the replacement asset shall be its cost minus the gain generated by the sale of the original asset. If a claimant defers the payment of income taxes on the gain generated by the sale of the original asset, the claimant may not use that gain to net the claimant's gains and losses as the claimant could do if the claimant did not elect to defer the payment of taxes on the gain.

Under this bill, the Department of Commerce must promulgate rules establishing a procedure for certifying venture capital funds for purposes of the capital gains tax exemption described above. A venture capital fund may obtain a certification only if the venture capital fund is a private seed and venture capital partnership or entity fund, the venture capital fund has its principal place of business in Wisconsin, and the venture capital fund commits to make equity investments in businesses located in Wisconsin. The bill requires the Department of Commerce, upon request of any person, to issue a written notice indicating whether a venture capital fund is certified. Each such notice that indicates a venture

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**SENATE BILL 261**

capital fund is certified must include the following statement: "THE WISCONSIN DEPARTMENT OF COMMERCE HAS NOT RECOMMENDED OR APPROVED AN INVESTMENT IN THIS VENTURE CAPITAL FUND OR ASSESSED THE MERITS OR RISKS OF SUCH AN INVESTMENT. INVESTORS SHOULD RELY SOLELY ON THEIR OWN INVESTIGATION AND ANALYSIS AND SEEK INVESTMENT, FINANCIAL, LEGAL, AND TAX ADVICE BEFORE MAKING THEIR OWN DECISION REGARDING INVESTMENT IN THIS ENTERPRISE." The bill also requires the Department of Commerce, upon issuing or discontinuing a certification, to notify DOR and give DOR a copy of the certification or discontinuance.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:

2           71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),  
3           (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), ~~and (3s)~~, and (5d) and not passed  
4           through by a partnership, limited liability company, or tax-option corporation that  
5           has added that amount to the partnership's, company's, or tax-option corporation's  
6           income under s. 71.21 (4) or 71.34 (1) (g).

7           **SECTION 2.** 71.05 (24) of the statutes is created to read:

8           71.05 **(24)** INCOME TAX DEFERRAL; INVESTMENTS IN CERTAIN VENTURE CAPITAL FUNDS  
9           AND QUALIFIED NEW BUSINESS VENTURES. (a) In this subsection:

10           1. "Claimant" means an individual; an individual partner or member of a  
11           partnership, limited liability company, or limited liability partnership; or an  
12           individual shareholder of a tax-option corporation.

13           2. "Financial institution" has the meaning given in s. 69.30 (1) (b).

14           3. "Long-term capital gain" means the gain realized from the sale of any asset  
15           held more than one year.

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## SENATE BILL 261

1 (b) To the extent that the gains are not excluded from taxation under sub. (6)  
2 (b) 9., a claimant may subtract from federal adjusted gross income any amount of a  
3 long-term capital gain, or any gain realized from the sale of an asset that is an  
4 investment in a qualified new business venture that is certified under s. 560.03 (26)  
5 or a venture capital fund that is certified under s. 560.03 (27), if the claimant does  
6 all of the following:

7 1. Immediately deposits the gain in a segregated account in a financial  
8 institution.

9 2. Within 90 days after the sale of the asset that generated the gain, purchases  
10 another capital asset, which is an investment in a qualified new business venture  
11 that is certified under s. 560.03 (26) or a venture capital fund that is certified under  
12 s. 560.03 (27), of equal or greater value using all of the proceeds in the account  
13 described under subd. 1.

14 3. After purchasing a capital asset as described under subd. 2., immediately  
15 notifies the department, on a form prepared by the department, that the claimant  
16 will not declare on the claimant's income tax return the gain described under subd.  
17 1. because the claimant has reinvested the capital gain as described under subd. 2.

18 (c) The basis of the purchased capital asset described in par. (b) 2. shall be  
19 calculated by subtracting the gain described in par. (b) 1. from the cost of the  
20 purchased asset described in par. (b) 2.

21 (d) If a claimant defers the payment of income taxes on a capital gain under this  
22 subsection, the claimant may not use the gain described under par. (b) 1. to net  
23 capital gains and losses, as described under sub. (10) (c).

24 **SECTION 3.** 71.07 (5d) of the statutes is created to read:

25 **71.07 (5d) QUALIFIED NEW BUSINESS VENTURE CREDIT.** (a) In this subsection:

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1       1. “Broker-dealer” has the meaning given in s. 551.02 (3).

2       2. “Claimant” means a person who files a claim under this subsection.

3       3. “Qualified new business venture” means a business that is certified under  
4 s. 560.03 (26).

5       (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),  
6 a claimant may claim as a credit against the tax imposed under s. 71.02, up to the  
7 amount of those taxes, any of the following:

8       1. An amount equal to 20 percent of the claimant’s investment in a qualified  
9 new business venture in the taxable year, except that if the claimant’s investment  
10 exceeds \$100,000 in the taxable year the claimant may claim 20 percent of \$100,000  
11 plus 10 percent of the amount of the investment that exceeds \$100,000.

12       2. If the claimant is a broker-dealer, an amount equal to 10 percent of the first  
13 \$500,000 raised in an offering of a qualified new business venture in the taxable year.

14       (c) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit  
15 under s. 71.28 (4), apply to the credit under this subsection.

16       (d) Partnerships, limited liability companies, and tax-option corporations may  
17 not claim the credit under this subsection, but the eligibility for, and the amount of,  
18 the credit are based on the amounts described under par. (b) that are attributable to  
19 their business operations. A partnership, limited liability company, or tax-option  
20 corporation shall compute the amount of credit that each of its partners, members,  
21 or shareholders may claim and shall provide that information to each of them.  
22 Partners, members of limited liability companies, and shareholders of tax-option  
23 corporations may claim the credit in proportion to their ownership interest.

24       (e) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),  
25 applies to the credit under this subsection.



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1       **SECTION 4.** 71.10 (4) (gx) of the statutes is created to read:

2       71.10 (4) (gx) Qualified new business venture credit under s. 71.07 (5d).

3       **SECTION 5.** 71.21 (4) of the statutes is amended to read:

4       71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),  
5       (2dj), (2dL), (2dm), (2ds), (2dx), (3g), ~~and (3s)~~, and (5d) and passed through to  
6       partners shall be added to the partnership's income.

7       **SECTION 6.** 71.26 (2) (a) of the statutes is amended to read:

8       71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means  
9       the gross income as computed under the Internal Revenue Code as modified under  
10       sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit  
11       computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed  
12       under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and (3g)~~, and (5d)  
13       and not passed through by a partnership, limited liability company, or tax-option  
14       corporation that has added that amount to the partnership's, limited liability  
15       company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus  
16       the amount of losses from the sale or other disposition of assets the gain from which  
17       would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or  
18       otherwise disposed of at a gain and minus deductions, as computed under the  
19       Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an  
20       amount equal to the difference between the federal basis and Wisconsin basis of any  
21       asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction  
22       during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

23       **SECTION 7.** 71.28 (5d) of the statutes is created to read:

24       71.28 (5d) **QUALIFIED NEW BUSINESS VENTURE CREDIT.** (a) In this subsection:

25       1. "Broker-dealer" has the meaning given in s. 551.02 (3).

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2. "Claimant" means a person who files a claim under this subsection.

3. "Qualified new business venture" means a business that is certified under s. 560.03 (26).

(b) Subject to the limitations provided in this subsection and in s. 560.03 (26), a claimant may claim as a credit against the tax imposed under s. 71.23, up to the amount of those taxes, any of the following:

1. An amount equal to 20 percent of the claimant's investment in a qualified new business venture in the taxable year, except that if the claimant's investment exceeds \$100,000 in the taxable year the claimant may claim 20 percent of \$100,000 plus 10 percent of the amount of the investment that exceeds \$100,000.

2. If the claimant is a broker-dealer, an amount equal to 10 percent of the first \$500,000 raised in an offering of a qualified new business venture in the taxable year.

(c) The carry-over provisions of sub. (4) (e) and (f), as they apply to the credit under sub. (4), apply to the credit under this subsection.

(d) Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on the amounts described under par. (b) that are attributable to their business operations. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interest.

(e) Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies to the credit under this subsection.

**SECTION 8.** 71.30 (3) (eop) of the statutes is created to read:

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1       71.30 (3) (eop) Qualified new business venture credit under s. 71.28 (5d).

2       **SECTION 9.** 71.34 (1) (g) of the statutes is amended to read:

3       71.34 (1) (g) An addition shall be made for credits computed by a tax-option  
4       corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and  
5       (3g), and (5d) and passed through to shareholders.

6       **SECTION 10.** 71.45 (2) (a) 10. of the statutes is amended to read:

7       71.45 (2) (a) 10. By adding to federal taxable income the amount of credit  
8       computed under s. 71.47 (1dd) to (1dx) and (5d) and not passed through by a  
9       partnership, limited liability company or tax-option corporation that has added that  
10      amount to the partnership's, limited liability company's or tax-option corporation's  
11      income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under  
12      s. 71.47 (1), (3), (4) and (5).

13      **SECTION 11.** 71.47 (5d) of the statutes is created to read:

14      71.47 (5d) **QUALIFIED NEW BUSINESS VENTURE CREDIT.** (a) In this subsection:

15      1. "Broker-dealer" has the meaning given in s. 551.02 (3).

16      2. "Claimant" means a person who files a claim under this subsection.

17      3. "Qualified new business venture" means a business that is certified under  
18      s. 560.03 (26).

19      (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),  
20      a claimant may claim as a credit against the tax imposed under s. 71.43, up to the  
21      amount of those taxes, any of the following:

22      1. An amount equal to 20 percent of the claimant's investment in a qualified  
23      new business venture in the taxable year, except that if the claimant's investment  
24      exceeds \$100,000 in the taxable year the claimant may claim 20 percent of \$100,000  
25      plus 10 percent of the amount of the investment that exceeds \$100,000.

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1           2. If the claimant is a broker-dealer, an amount equal to 10 percent of the first  
2       \$500,000 raised in an offering of a qualified new business venture in the taxable year.

3           (c) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit  
4       under s. 71.28 (4), apply to the credit under this subsection.

5           (d) Partnerships, limited liability companies, and tax-option corporations may  
6       not claim the credit under this subsection, but the eligibility for, and the amount of,  
7       the credit are based on the amounts described under par. (b) that are attributable to  
8       their business operations. A partnership, limited liability company, or tax-option  
9       corporation shall compute the amount of credit that each of its partners, members,  
10      or shareholders may claim and shall provide that information to each of them.  
11      Partners, members of limited liability companies, and shareholders of tax-option  
12      corporations may claim the credit in proportion to their ownership interest.

13          (e) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),  
14      applies to the credit under this subsection.

15      **SECTION 12.** 71.49 (1) (eop) of the statutes is created to read:

16      71.49 (1) (eop) Qualified new business venture credit under s. 71.47 (5d).

17      **SECTION 13.** 77.92 (4) of the statutes is amended to read:

18      77.92 (4) "Net business income", with respect to a partnership, means taxable  
19      income as calculated under section 703 of the Internal Revenue Code; plus the items  
20      of income and gain under section 702 of the Internal Revenue Code, including taxable  
21      state and municipal bond interest and excluding nontaxable interest income or  
22      dividend income from federal government obligations; minus the items of loss and  
23      deduction under section 702 of the Internal Revenue Code, except items that are not  
24      deductible under s. 71.21; plus guaranteed payments to partners under section 707  
25      (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),

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1 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), ~~and (3g), and (3s), and (5d)~~; and plus or  
2 minus, as appropriate, transitional adjustments, depreciation differences, and basis  
3 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,  
4 loss, and deductions from farming. “Net business income”, with respect to a natural  
5 person, estate, or trust, means profit from a trade or business for federal income tax  
6 purposes and includes net income derived as an employee as defined in section 3121  
7 (d) (3) of the Internal Revenue Code.

8 **SECTION 14.** 560.03 (24) to (27) of the statutes are created to read:

9 560.03 (24) In cooperation with the department of financial institutions and  
10 the Board of Regents of the University of Wisconsin System, annually conduct and  
11 publish the results of a study of Wisconsin businesses to determine new business  
12 formation trends and identify obstacles faced by new Wisconsin businesses and areas  
13 where changes in governmental policy may satisfy the needs of new Wisconsin  
14 businesses. As part of the study, the department of commerce shall conduct a survey  
15 of Wisconsin businesses.

16 (25) In cooperation with the department of financial institutions and the Board  
17 of Regents of the University of Wisconsin System, provide education and other  
18 support to facilitate the development networks of investors that review new  
19 businesses or proposed new businesses for potential investment.

20 (26) Certify businesses as qualified new business ventures for purposes of ss.  
21 71.07 (5d), 71.28 (5d), and 71.47 (5d). The department shall promulgate rules for the  
22 administration of this subsection. The rules shall require a business desiring  
23 certification to submit an application to the department. The department shall  
24 maintain a list of businesses certified under this subsection and shall permit public  
25 access to the list through the department’s Internet website. The department shall

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71.05(24)

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1 notify the department of revenue of every business certified under this subsection  
2 and the date on which any such business is decertified. A business may be certified  
3 under this subsection, and may maintain such certification, only if the business  
4 satisfies all of the following conditions:

5 (a) It has its headquarters in this state.

6 (b) At least 51 percent of the employees employed by the business are employed  
7 in this state.

8 (c) Its average annual net income for each of the 2 taxable years immediately  
9 preceding the taxable year for which a credit is claimed does not exceed \$20,000,000.

10 (d) It's net worth in the taxable year for which a credit is claimed does not  
11 exceed \$75,000,000.

12 (e) It is not engaged predominantly in providing professional services by  
13 accountants, lawyers, or physicians.

14 (f) It is not engaged predominantly in trade or in the leisure and hospitality  
15 industry.

16 (g) It is not engaged in banking or lending or in developing real estate for resale.

17 (h) It does not make loans to, or investments in, certified capital companies, as  
18 defined in s. 560.30 (2).

19 (i) It has been in operation in this state for at least ~~3 consecutive years~~ <sup>one year</sup> but not  
20 more than 10 consecutive years.

21 (27) Certify venture capital funds as follows:

22 (a) The department shall promulgate rules establishing a procedure for the  
23 department to certify venture capital funds for purposes of the capital gains tax  
24 exemption under s. 71.05 (24). The rules shall do all of the following:

**SENATE BILL 261****SECTION 14**

1           1. Require a venture capital fund that desires to obtain a certification to file an  
2 application with the department.

3           2. Permit a venture capital fund to obtain a certification only if the venture  
4 capital fund is a private seed and venture capital partnership or entity fund, the  
5 venture capital fund has its principal place of business in Wisconsin, and the venture  
6 capital fund commits to make equity investments in businesses, as described under  
7 sub. (26), that are located in Wisconsin.

8           3. Require an applicant for certification or a certified venture capital fund to  
9 provide the department with any information the department determines is  
10 necessary to ensure eligibility for certification and compliance with this subsection  
11 and rules promulgated under this subsection.

12           (b) Upon request of any person, the department shall issue a written notice  
13 indicating whether a venture capital fund is certified under this subsection for  
14 purposes of the capital gains tax exemption under s. 71.05 (24). Each notice under  
15 this paragraph that indicates a venture capital fund is certified shall include the  
16 following statement: "THE WISCONSIN DEPARTMENT OF COMMERCE HAS NOT  
17 RECOMMENDED OR APPROVED AN INVESTMENT IN THIS VENTURE CAPITAL FUND OR ASSESSED  
18 THE MERITS OR RISKS OF SUCH AN INVESTMENT. INVESTORS SHOULD RELY SOLELY ON THEIR  
19 OWN INVESTIGATION AND ANALYSIS AND SEEK INVESTMENT, FINANCIAL, LEGAL, AND TAX  
20 ADVICE BEFORE MAKING THEIR OWN DECISION REGARDING INVESTMENT IN THIS ENTERPRISE."

21           (c) Upon the issuance or discontinuance of a certification, the department of  
22 commerce shall notify the department of revenue and provide the department of  
23 revenue a copy of the certification or discontinuance.

24           **SECTION 15. Nonstatutory provisions.**

## SENATE BILL 261

1 (1) RULES. The department of commerce shall submit in proposed form the rules  
2 required under section 560.03 (26) and (27) of the statutes, as created by this act, to  
3 the legislative council staff under section 227.15 (1) of the statutes no later than the  
4 first day of the 6th month beginning after the effective date of this subsection.

5 **SECTION 16. Initial applicability.**

6 (1) QUALIFIED NEW BUSINESS VENTURE CREDIT. The treatment of sections 71.05  
7 (6) (a) 15., 71.07 (5d), 71.10 (4) (gx), 71.21 (4), 71.26 (2) (a), 71.28 (5d), 71.30 (3) (eop),  
8 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (5d), 71.49 (1) (eop), and 77.92 (4) of the statutes  
9 first applies to taxable years beginning on January 1, 2006.

10 (2) INCOME TAX DEFERRAL. The treatment of section 71.05 (24) of the statutes  
11 first applies to taxable years beginning on January 1, 2006.

12 **SECTION 17. Effective dates.** This act takes effect on July 1, 2004, except as  
13 follows:

14 (1) RULES. SECTION 15 (1) of this act takes effect on the day after publication.

15 (END)

INSERT 13-11 ✓



**SENATE AMENDMENT ,  
TO 2003 SENATE BILL (LRB-3266/3)**

INSERT  
3-6

INSERT  
1-8

At the locations indicated, amend the bill as follows:

✓ 1. Page 1, line 8: after "networks," insert "excluding from taxable income gains from a start-up technology business,".

✓ 2. Page 3, line 6: after that line insert:

SECTION 11a. 71.05 (6) (b) 34. of the statutes is created to read:

71.05 (6) (b) 34. To the extent that the gains are not excluded from taxation under subd. 9. or sub. (24), 100 percent of the capital gain as computed under the Internal Revenue Code if the gain is realized from the sale of an asset that is an investment in a start-up technology business. For purposes of this subdivision, the capital gains and capital losses for all assets shall be netted before application of the percentage. In this subdivision, a "start-up technology business" is a business that satisfies all of the following conditions:

a. Its principal business operations are located in this state.

INSERT 3-6

b. It has been in operation for no more than 3 years.

c. Its owner has at least 3 years of relevant business or technology experience, or any other experience that the department determines is sufficient to increase the likelihood of the success of the business, or its owner has successfully completed an entrepreneurial venture development curriculum; a degree in business management, business administration, or a related field or a degree in a technology field; or any other training that the department determines is sufficient to increase the likelihood of the success of the business.

d. It is a business engaged primarily in a technology field.

e. Its net worth does not exceed \$3,000,000.

f. In the taxable year in which cash investments are first made in the business, it secures total equity financing or near equity financing equal to at least \$250,000. "Near equity" means debt that may be converted to equity at the option of the debt holder and royalty agreements.

✓ 3. Page 11, line 19: delete "3 consecutive years" and substitute "one year".

✓ 4. Page 13, line 11: after that line insert:

17 (3) CAPITAL GAINS EXEMPTION. The treatment of section 71.05 (6) (b) 34. of the  
18 statutes first applies to taxable years beginning on January 1, 2006.

19 (END)

INSERT 13-1

3325/1

INSERT A ✓

✓K

In addition, under the bill, the capital gain  
of sale of an asset  
realized from the sale of an asset that is an investment  
in a start-up technology business may be excluded  
from taxation, if the business has its principal  
operations in this state, it has been in operation for  
no more than three years, its owner has three<sup>h</sup>  
years of relevant business experience or education,  
it is engaged primarily in a technology field,  
its net worth does not exceed \$3,000,000, and  
it secured<sup>(S)</sup> financing equal to at least \$250,000.

3325/1 dr

Ulc : King:

Representative Lischke:

This draft is identical to 2003 Senate Bill  
261, as amended by LRBa 0963// and LRBa 0999//.

Please contact me if you have any questions.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3325/1dn  
JK:kmg:rs

September 25, 2003

Representative Nischke:

This draft is identical to 2003 Senate Bill 261, as amended by LRBa0968/1 and LRBa0999/1. Please contact me if you have any questions.

Joseph T. Kreye  
Legislative Attorney  
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# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

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FAX: (608) 266-5648

STEPHEN R. MILLER  
CHIEF

LKB

October 20, 2003

## MEMORANDUM

**To:** Representative Nischke

**From:** Joseph T. Kreye, Legislative Attorney, (608) 266-2263  
Marc E. Shovers, Sr. Legislative Attorney, (608) 266-0129  
Robert J. Marchant, Legislative Attorney, (608) 261-4454

**Subject:** Technical Memorandum to **2003 AB 538** (LRB-3325/1)

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We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

L12B

## MEMORANDUM

October 6, 2003

**TO:** Joseph Kreye  
Marc Shovers  
Robert Marchant  
Legislative Reference Bureau

**FROM:** Dennis Collier  
Department of Revenue

**SUBJECT:** Technical Memorandum on AB 538: Tax Credit for New Business Venture

### Qualified New Business Venture Tax Credit

Certain terms should be defined to reflect the sponsor's intent. It is unclear if an investment in a qualified new business venture must be a direct investment in which the business itself receives moneys, or if one individual may simply purchase an ownership interest from another person, with no additional capital invested in the business. It is also unclear if an offering by a broker-dealer means an initial public offering (IPO).

The order of computation of the credit in sec. 71.10 (4)(gx) allows it to offset the alternative minimum tax (AMT). However, the language in sec. 71.05 (5d)(b) provides that the credit may be offset against the tax under sec. 71.02. If the credit is intended to offset the AMT, then sec. 71.05 (5d)(b) should allow the credit against the taxes due under either secs. 71.02 or 71.08. Because the credit is claimed after the AMT, it should be included in the list of credits in sec. 71.08 (1)(a).

It is unclear what is meant by the first \$500,000 raised in an offering by a broker-dealer in a taxable year. It is unclear if the sponsor intends for the broker-dealer to claim a credit for \$500,000 in one taxable year and then again in the next taxable year for the same business. Alternatively, the provision could be interpreted to limit the credit to investments in the first taxable year even if a broker-dealer raises \$100,000 in one taxable year and \$300,000 in the next taxable year.

### Capital Gains Deferral

The language in the proposed bill does not instruct when and how the deferred gain must be reported as income. For example, it does not address the treatment of a husband and wife who make a joint investment and then separate or divorce before the asset is sold, nor does it address the treatment of an inherited investment.

The time frame expressed as "immediately" in sec. 71.05 (24)(b)1 and 3 needs to be clarified to specify the time by which the taxpayer must notify the department.

Section 71.05 (24) allows the deferral of a gain when a "capital asset" is purchased. The definition of a "capital asset" in sec. 1221 (a) of the IRC does not include property used in a trade or business that is subject to depreciation. Depreciable property when sold may be taxable as a long-term capital gain or as ordinary income. The language of the proposed bill should be changed if the intent is to allow the deferral for depreciable property.

Section 560.03 (27) refers to the capital gains tax deferral described in sec. 71.05 (24) as an "exemption". To avoid confusion, "exemption" should be changed to "deferral".

#### Capital Gain Exclusion

The definition of a "start-up technology business" should be clarified in the statute or the statute should give the Department of Revenue the authority to define the term by rule. Examples of areas where clarification is needed follow:

- 1) One condition is that its principal business operations are located in Wisconsin. The statute should be more specific as to how to determine this.
- 2) The second condition is that the business has been in operation for no more than 3 years. The statute should address the possibility of an existing business liquidating and reorganizing in order to meet this condition.
- 3) Another condition is that the business is engaged primarily in a technology field. Both "primarily" and "technology field" should be defined.
- 4) An additional condition is that its net worth does not exceed \$3,000,000. The statute should specify when this condition must be met.

If you have questions regarding this technical memorandum, please contact Pam Walgren regarding the investment credit at 266-7817 and Karyn Kriz for the capital gains deferral or exclusion at 261-8984.